United States District Court
Eastern District of Wisconsin

Brian Mays
plaintiff

Vs

Bill Greening, et al
defendants

Case No. 09-CV-42

Motion For A New Trial

Now comes the plaintiff Brian Mays and moves the court to vacate the Jury verdict of October 30, 2012, and grant Mays a new Trial based on the following grounds:

The plaintiff had less then (5) hours ~~to~~ use the law library and research the issue's on this case; sence the court's order of November 13, 2012.

Memorandum of law

Argument (1)

The court abused its discretion. when it made an order on October 15, 2012. That Mays appear in court Wearing prison Greens and restraints. (DOC-120).

on October 29, 30, 2012. The court had Mays, brung to court in prison Greens

and restraints and praided around in the courtroom infront of (8) Jury members. The court didn't only abuse its discretion hemons v. Skidmore 985 F.2d 354 (7th Cir. 1993), but made the Jury highly prejudice against MAUS because they didn't see him as a person, but as an inmate that was very violate and dangerous.

MAUS wasn't only sueing the defendants "police officers" for useing excessive force against him during a cell extraction, but the police where allowed to testify against MAUS, and make him look and sound like a very violate and dangerous inmate. Sanders v. Welborn, 2011 U.S. DIST. LEXIS. 43306 Id. at 6, and Williams v. Blagojevich, 2011 U.S. DIST. LEXIS. 23512 Id at 4.

The court didn't take any measure's to stop the Jury from reviewing MAUS in prison clothes and restraints. Welborn and Blagojevich

The court had MAUS marched inside and outside the courtroom, and sit infront of all the Jury members in full prison dreeris and restraints. while (20) to (25) police officers in full police Uniforms sat in different parts of the courtroom

even next to mays. Ford V. Bell 2012 U.S. Dist. Lexis. 57324 and Bemben V. Deckee 1995 U.S. Dist. Lexis. 725.

The court had mays looking like he was some very violent and dangerous inmate that couldn't be controlled without full restraints. While the court allowed all the defendants to appear in court in full police uniforms making mays look more violent and dangerous.

When mays went to get on the witness stand to testify against the defendants for useing excessive force against him. Judge Randa ordered the (2) correctional officers that where with mays. To remove the hand-cuffs off of mays infront of the jury. Then had mays sit on the witness stand while the (2) correctional officers stood over the top of mays or stood (2) to (3) feet away while mays testified against the (15) defendants "police officers" that where in full uniforms sitting in the courtroom.

This made mays look more like a dangerous inmate that couldn't be controled without prison restraints, and (20) to (25) police officers presents.

After maus was done testifying Judge Randa ordered the (2) correctional officers to handcuff maus back up infront of the Jury, and walk maus back to his seat infront of the Jury. Lemons, Welborn and Blagojevich. Men had one of the correctional officers sit next to maus in the courtroom.

These acts wherein only highly prejudicial against maus and his lawsuit, but every time the Jury left and came back in to the courtroom. maus was ordered to stand up in full prison Greens and restraints infront of all the Jury members, so they could see maus looking like a dangerous and violent person that had to be restrained with chains.

There wasn't any steps taken by Judge Randa or the plaintiff's attorneys, to stop the Jury from reviewing maus as a muster or dangerous person Lemons.

The court didn't even take steps to stop the Jury from Reviewing maus in Full prison Greens or restraints. Highly prejudicial to maus. Wood v. Thieret 5 F.3d 244 Id. at 13 (1993). Instead had maus marched inside and outside the courtroom

looking like some kind of moster That needed to be controlled with chains.

There was Know way The defendants where going to lose This lawsuit for using excessive force against mars. The way The court had mars presented to The Jury and The way mars was moved inside and outside The courtroom in prison restraints and (2) or more officers escorting him around.

In support of This argument. Judge Randa made an order on octobee 15, 2012 stating:

"mars' criminal Record and The (2) Counts of an attempted battery The defendants Claim mars committed against Them cannot be disclosed to The Jury."

It didnt make any differnts That The court suppressed mars's criminal record The court still abused it's discretion, and had mars escorted around inside and outside The courtroom infront of The Jury in full prison Greens and restraints, and had (2) or more officers escorting him at all times. To top This off. Judge Randa had (20) to (25) police officers sitting inside

and outside the courtroom in full police uniforms, making MAYS look more like a monster that couldn't be controlled without the presents of all these police officers and prison restraints.

There was know way MAYS was going to find an inpartial jury, the way the court had MAYS charged up and the way MAYS was presented to the jury.

The court didn't hold a hearing outside the present of the jury or before trial, to see if MAYS was any kind of threat to the court, flight risk or to the security Lemons v. Skidmore 985 F.2d 354. Id. at 11, Harrell v. Israel, 672 F.2d 632. Id. at 8 and Woods v. Thieret, 5 F.3d 244 (1993).

Instead the court relied on a motion the defendants filed on October 11, 2011. (Dkt. Doc. 119), claiming MAYS was a very dangerous and violent inmate, that should not be allowed to appear in court in street clothes or without prison restraints. very prejudicial.

The defendants based their motion off of two (2) counts of an attempted battery case No. 07-CF-116. No certified judgment of conviction, or anything else to support

this argument.

The defendants also based there motion off of claiming MAUS was convicted of armed robbery, armed burglary with a dangerous weapon and bail Jumping. Again wasn't supported with a Certified copy of a Judgment of conviction or anything else. "JUST the defendants word and motion."

In support of this argument the plaintiffs attorney's didn't object before trial or at trial, about making MAUS appear in court in prison Greens or full restraints, and allowing the jury to review MAUS this way.

MAUS even told his attorney's during trial that they need to object, to how highly prejudicial it is to have MAUS appearing infront of the jury in prison Greens and full prison restraints. MAUS' Attorney's over and over told him to be quit or the court is going to hold him in contempt of court, and remove MAUS from the courtroom.

On October 30, 2012. AFTER the jury came back with a verdict in the defendants favor. MAUS told all his attorney's that he wants them to appeal the jury verdict,

because MAUS was highly prejudiced over the way the court had MAUS presented to the jury in prison greens and FULL restraints. MAUS' attorney's told him that his issues, are frivolous even if ~~they~~ they did have merit. Judge Randa isn't going to change his ruling on how MAUS had to appear in court in prison greens and full restraints. MAUS' attorney's told him they aren't appealing the jury verdict. That if MAUS wants it appealed he will have to do it himself.

On October 16, 2012. when MAUS' attorney's came and seen him at the Greenbay corr. Inst., and told him about Judge Randa's order, that MAUS has to wear prison Greens and full restraints during the trial. MAUS told his attorney's thats prejudicail and that they need to file a motion for reconsideration, and argue. That its very prejudicial to make MAUS appear in court in prison Greens and full restraints.

MAUS' attorneys told him they ant file a motion for reconsideration, because Judge Randa isn't going to change his ruling.

on october 15, 2012. MAYS did a follow up letter on the same issue's to his attorneys they never answered MAYS' letter.

Court's order of October 15, 2012. (DOC. 120) Stated:

"It will take steps to minimize the amount of prejudice to MAYS, by instructing the Jury to disregard the restraints. when MAYS is testifying."

The court took know steps to minimize the prejudice to MAYS. Instead the court had MAYS marched around in the courtroom infront of the Jury like MAYS was some kind of prison animal that couldn't be controlled without prison restraints and (25) police officer's being present.

The court didn't give the Jury a Jury an instruction to disregard the prison greens and restraints. Even if the court did. The Jury was still tainted, on the way the court had MAYS presented to them-

Court's order of October 15, 2012 (DOC. 120) Stated:

"The court will order that the appearance of MAYS' Shackles to the Jury be

minimized as much as possible, and the court will also give a curative instruction" advising the jury to disregard the restraints when assessing the testimony."

The court didn't do anything to minimize the prejudice or the prison greens or shackles mays was wearing, but instead had mays sitting right infront of the jury, had him marched inside and outside the courtroom infront of the jury, had mays stand infront of the jury when they where coming in the courtroom, and leaving, and when mays went to get on the witness stand. Judge Rauda ordered mays' handcuffs be removed infront of the jury by (2) correctional officers then had these same officers standing over mays, feet away when he was testifying. Then had mays reshackled back up infront of the jury after he was done testifying.

Then had (1) of the correctional officers sit next to mays, and at all times there was (25) other police officers in full police uniforms sitting feet away from mays in the courtroom, making it more prejudice against mays.

The court didn't take steps to minimize the Jury from seeing MAUS in prison restraints. There wasn't anything done, but instead the court had MAUS marched around in the courtroom like he some prison animal that could not be restrained without prison chains. Highly prejudice MAUS should be granted a new trial and be allowed not to appear in court in prison Greens or restraints.

MAUS was denied his constitutional rights to a fair trial, impartial Jury and his 5th, 6th and 14th Amendments, and should be granted a new trial.

Argument (2)

on october 29, 30, 2012. The court allowed the defendants to appear in court in there full police uniforms. This was highly prejudice to MAUS.

The defendants appearing in court infront of the Jury in their police uniforms and badges highly prejudiced MAUS. IT didn't only prejudice MAUS, but it beefed up the defendants testimony and made them look more credible infront of the Jury, because they where seen as police officers, not as someone who would assault a person.

Then the Jury seen the plaintiff in full prison Greens and restraints, and (25) police officers sitting in the courtroom in full police uniforms. This was highly prejudice but the court made sure MAYS looked like some kind of ax killer, murder or prison Animal that couldn't be trusted and had to be in full prison Greens and restraints, and had a correctional officer sitting next to him at all times and (25) other police officers in full police uniforms sitting in the courtroom feet away from MAYS.

There was know way MAYS was going to win his excessive force lawsuit against the defendants, on the way the court allowed MAYS to be presented to the Jury, and how the defendants where allowed to be dressed in there full police uniforms.

The way MAYS was presented to the Jury wasn't prejudicial enough. The court allowed these same defendants in full police uniforms get on the witness stand and testify against MAYS claiming that (3) to (9) police officers ~~could~~ couldn't control MAYS at the time they where doing a cell extraction on him. That they had to use a tazer on MAYS to control him.

The court allowed MAYS' attorney's and the defendants attorney's to present MAYS to the jury as some kind of very dangerous and violent inmate that couldnt be controlled without prison restraints or a (25) man police presents, and no obiections from MAYS' attorneys.

The defendants testimony, uniforms and the way MAYS was presented to the jury wasn't only highly presudiced, but scared the jury into believing MAYS was some very violent and dangerous inmate that got what he had coming to him.

The court should of never allowed any of the defendants to appear in court wearing their police uniforms and badges. This look was highly presudice to MAYS. Bemben v. Hunt, 1995 U.S. Dist. Lexis. 725 at 10 and Ford v. Bell, 2012 U.S. Dist. Lexis. 57324. Id. at 7.

The plaintiff should be granted a new trial and all the defendants be ordered to wear citizens clothes. Violation of MAYS' 5th, 6th and 14th Amendments.

Argument 13).

The defendants training and policy manuel on how they where trained on

on how to do cell extractions on inmates.

on september 19, 2012. The plaintiff's Attorney's filed a motion in limine (Plain DOC # 102), to be allowed to question the defendants about how they where all trained on how to do cell extractions on inmates, and how the hanglade County Sheriff's dept., adopted the state of wisconsin training manuel guidlelines on how to do cell extractions on inmates, and the hanglade County sheriffs dept., had these same guild lines in effect on January 15, 2007 and April 12, 2007. when they extracted mays out of his cell. (Plain DOC # 111 # 8-28) Curtries v. City of chi, 2002 U.S. DIST. LEXIS 24053, Grieveson v. Anderson 538 F.3d 763 (2008), Smith v. Village of Dolton 2010 wh 744313 and Huff v. Hammond, 2010 U.S. DIST. LEXIS 55718 (2010).

on October 15, 2012. (DOC. # 120 # pg # 6) Judge Randa granted mays the right to question all the defendants about being trained on how to do cell extractions on inmates, and about the hanglade County Sheriff's dept. having a cell extraction policy in effect on January 15, 2007 and April 12, 2007. when they extracted mays

out of his cell.

On october 29, 30, 2012. During the trial the plaintiff's Attorney's refused to question any of the defendants about how they where all trained on how to do cell extractions on inmate's., and that the Sangrade County sheriff's dept. and even had a cell extraction policy in place on January 15, 2007 and April 12, 2007. when they extracted MIMS out of his cell.

When MIMS told his Attorneys at trial to question the defendants about being trained on how to do cell extractions and how they didn't follow there own training or policy at the time they extracted MIMS out of his cell. MIMS' Attorney's kept telling him they will ask them question's later, and make that arguement at closing how they didn't follow there own training or policy's at the time of the cell extractions.

Even Though all the defendants admitted in interrogatories that they where all trained on how to do cell extraction's on inmates, and didn't follow their training (Plain'doc # 111 # 30), and that the Sangrade County sheriff's dept., had a cell extraction policy in place on January 15, 2007 and

and April 12, 2007, on how its officers shall extract inmates out of there cells and didn't follow it. (Plain Doc #111 #8-28 pgs 101-103) Mays' Attorney's refused to present this testimony or evidence to the jury to show the defendant's negligence, but instead presented a defense for the defendant's stating they should of used less forceful or alternative's moves to move Mays out of his cell. Nothing to do with the defendants own negligence of not following there own training or Policy, but instead presented a defense for the defendant's to justify them illegally tazing and choking Mays.

Mays' attorneys also didn't question the defendants why they didn't video tape the cell extractions they did on Mays on January 15, 2007 and April 12, 2007, as the law requires even though Waukesha County Sheriff's Dept., had a hand held video camera to video tape the cell extractions. (Plain Doc #111 #30) Parker v. Krause-Herbst, 2010 U.S. Dist. Lexis. 23905, Mediacelja v. Horner 2003 U.S. App. Lexis. 24097, McMary v. Norman 1998 U.S. App. Lexis. 281 and Smith v. Bell, 1993 U.S. Dist. Lexis. 20396.

The plaintiff should be granted a new trial based on the grounds on how his attorneys misrepresented him, and the way they helped the defendant ~~defe~~ win at trial and make sure mays lost his excessive force claim against the defendants. mays could of did a bettee job representing himself. Then having the attorneys he had. That wherein representing him but the defendants.

Argument (4)

The court abused its discretion when it denied mays his constitutional Right. To proceed against all the defendants for violating mays' Fourth Amendment. When the defendants illegally video taped mays using the bathroom, changing clothes, sleeping etc. (DOC #1) and (DOC #3). Between January 7, 2007 Through April 20, 2007. mays was illegally placed in a receiving cell for days on end, that had a video camera in it, and video taped everything mays did, as sleeping, using the bathroom, changing clothes etc. without

having a court order or getting permission from MAYS to video tape him. (Doc#1) MAYS was a pretrial detainee at the time all the defendants where illegally video taping ~~them~~ MAYS nude, useing the bathroom, changing clothes and sleeping etc. Hill v. Mckinley, 311 F.3d 899 (8th Cir. 2002), Crosby v. Reynold, 763 F. Supp. 666 (1991) and Wiren v. Tuckee, 2012 U.S. Dist. Lexis. 13720.

MAYS didn't leave his Fourth Amendment or constitutional rights outside the Hanglade County police dept., Jail. when he entered it as a pretrial detainee Jones v. Thompson 818 F.Supp. 1263.

On August 27, 2012. (Ref. Doc. #96) Attorney Smith filed a motion to stop all oral and video tape recordings from coming in at trial. The defendants own Attorney tried to protect MAYS's privacy or Fourth Amendment Rights, more then MAYS's own Attorney's did. Even though Attorney Smith was off point on the law about a pretrial detainee privacy rights. At least Smith tried to stop the video tapes from be disclosed at the trial, because Smith knew it was a violation of

maus's Fourth Amendment. McKinley and Tucker. Smith also knew this evidence was highly prejudice to maus's defense.

On September 19, 2012. (Plain # Doc. 102) maus's Attorney's Filed a motion, and argued against Attorney Smith's motion. (Def. #96) to bring in all the video tapes where Waukesha County Sheriff's Dept., illegally video taped maus for days on end using the bathroom, changing clothes, sleeping etc., (24) hour's a day and violating maus's privacy and Fourth Amendment rights. maus's didn't give his attorney's or knowone else permission to video tape him, or disclose the video tapes to anyone else, or for that matter to a Jury.

maus's Attorney's didn't disclose the video tapes to the Jury to help maus' win his lawsuit against the defendant's for using excessive force against him when they illegally tazed maus. maus's Attorney's disclosed the illegal video tapes to the Jury to help the defendants win the lawsuit, and help the Jury Justify why the defendants tazed maus. The tapes made maus look like some kind

of inmates that couldn't be controlled without turing him. Mays' Attorney's disclosed the illegal video tapes to help justify the assault.

There was no any other reason why Mays' Attorney's disclosed the video tapes, but to help the defendant's win the lawsuit filed against them.

Mays should be granted a new trial and be allowed to sue all the defendants for violating his Fourth Amendment and privacy Rights, as Mays' complaint requested (Doc #1).

Conclusion

Mays should be granted a new trial, based on all the issues he raised in this motion, and be granted his constitutional right to sue all the defendants for a Fourth Amendment violation, for illegally video taping him using the bathroom, changing clothes, sleeping etc.

November 29, 2012
dated

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